

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
CHARLOTTESVILLE DIVISION**

UNITED STATES OF AMERICA)	CRIMINAL CASE No. 3:10CR00016-1
)	
v.)	<u>ORDER</u>
)	
DANIEL J. BROWN)	BY: NORMAN K. MOON
)	UNITED STATES DISTRICT JUDGE

In accordance with the accompanying memorandum opinion, it is hereby **ORDERED** that Defendant's motion to vacate, set aside, or correct sentence, pursuant to 28 U.S.C. § 2255 (docket no. 140) is **DENIED**, the Government's motion for summary judgment (docket no. 149)* is **GRANTED**, and this action is **STRICKEN** from the active docket of the court. Furthermore, upon my finding that Defendant has failed to make a substantial showing of the denial of a constitutional right as required by 28 U.S.C. § 2253(c)(1), a certificate of appealability is **DENIED**.

The Clerk of the Court is directed to send a copy of this order and the accompanying memorandum opinion to Defendant and to all counsel of record.

Entered this 30th day of December, 2013.



NORMAN K. MOON
UNITED STATES DISTRICT JUDGE

* The Government's motion (docket no. 149) is entered on the docket as a motion to dismiss. However, the motion asks "this Court to deny Petitioner's motion and to enter *summary judgment* on behalf of the United States." (Emphasis added.) Moreover, the motion relies on evidence outside the record, which I have considered. *See* Fed. R. Civ. P. 12(d) ("If, on a motion under Rule 12(b)(6) or 12(c), matters outside the pleadings are presented to and not excluded by the court, the motion must be treated as one for summary judgment under Rule 56."); *see also* Rule 12, Rules Governing Section 2255 Proceedings ("The Federal Rules of Civil Procedure and the Federal Rules of Criminal Procedure, to the extent that they are not inconsistent with any statutory provisions or these rules, may be applied to a proceeding under these rules."). And, in support of his reply to the Government's motion, Defendant was granted leave to expand the record. *See* Rule 7, "Expanding the Record," Rules Governing Section 2255 Proceedings. Accordingly, the parties have been "given a reasonable opportunity to present all the material that is pertinent to the motion." Fed. R. Civ. P. 12(d); *see also* Rule 7, Rules Governing Section 2255 Proceedings ("The judge must give the party against whom the additional materials are offered an opportunity to admit or deny their correctness.").